



[2022] UKFTT 00016 (TC)

(TC) 08369

Coding notice – appeal – PAYE and self-assessment – Bristol & West – statements that not liable to tax – disputed tax suspended – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/00707

BETWEEN

SUSAN ELIZABETH MECHAN

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE RACHEL SHORT

The Tribunal determined the appeal on 13 December 2021 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Appellant's written submissions of 5 May 2021 and 31 May 2021 (with enclosures), HMRC's response (with enclosures) acknowledged by the Tribunal on 22 October 2021.

DECISION

INTRODUCTION

1. This is an appeal by the Appellant, Ms Mechan in respect of tax coding notices issued to her by HMRC for the 2019-20 tax year, stating that Ms Mechan had no tax to pay.
2. This appeal is part of a substantive appeal made by Ms Mechan against the denial of losses arising from a partnership in which she invested in the 2001-2 tax year. That appeal was heard by me on 30 March and 1 April 2021. In a decision released on 5 May 2021 I struck out all elements of Ms Mechan's appeal save the element relating to the tax coding notices. That element of her appeal is considered here.
3. In essence Ms Mechan's argument is that because the tax coding notices which were issued to her in 2019-20 stated that she had no tax to pay, HMRC are precluded from claiming the tax which they say is due in respect of the disallowed partnership losses. Ms Mechan relies on the decision in *Bristol & West* to support her position.

Background

4. In my Decision released on 5 May 2021 I held at paragraphs 104-106 that what I referred to as Ms Mechan's fifth ground of appeal "the appeal against tax notice" should not be struck out because HMRC had not fully addressed that element of her appeal.
5. In response to Directions issued on 22 September 2021, HMRC have now provided a detailed statement of case dealing with this element of Ms Mechan's appeal.
6. Ms Mechan has also made further submissions dated 5 May, 12 May and 31 May 2021 setting out her arguments under this head of her appeal.

THE LAW

7. A taxpayer's right to appeal against a coding notice is set out at Regulation 18 of the 2003 PAYE regulations:

"Objections and appeals against employee's code

18(1) An employee who objects to the determination of a code must state the grounds of the objection.

18(2) On receiving the notice of objection the Inland Revenue may amend the determination of the code by agreement with the employee.

18(3) If the Inland Revenue and employee do not reach agreement, the employee may appeal against the determination of the code by giving notice to the Inland Revenue.

18(4) On an appeal that is notified to the tribunal, the tribunal must determine the code in accordance with these Regulations".

8. Ms Mechan also refers to

(1) The Upper Tier Tribunal decision in *Bristol & West*:

Bristol & West v HMRC [2014] STC 1048 and subsequently heard by the Court of Appeal [2016] EWCA Civ 39; and

(2) The first-tier tribunal decision in *Onillon: Onillon v HMRC* [2018] UKFTT 33(TC)

EVIDENCE SEEN

I was provided with

9. The tax coding notices and amending notices issued to Ms Mechan for the 2019-20 tax year on:

- (1) 28 February 2019
- (2) 5 April 2019
- (3) 4 October 2019
- (4) 6 November 2019

in respect of her pension income from two pension providers. These each provided an explanation of the coding applied, but did not include a statement of the amount of tax due from Ms Mechan.

10. A letter from HMRC written to Ms Mechan on 26 July 2021 concerning her tax coding explaining that “the tax codes operated meant that taking the year as a whole, no tax was deducted from your pensions”

11. A letter written from HMRC to Ms Mechan on 18 October 2019 stating “As you were not liable for tax, we did not issue a copy of the 2019-20 tax codes calculated on 5 April 2019”.

12. Letters from HMRC to Ms Mechan of 6 October 2019 and 6 November 2019 accompanying the amended coding notices, which do not specifically refer to whether Ms Mechan has tax to pay.

13. A print out of Ms Mechan’s personal on-line self-assessment tax account dated 11 June 2019 showing no tax to pay for the year ended 5 April 2019.

14. HMRC’s letter of 1 February 2012 stating in respect of amendments to Ms Mechan’s self-assessment return to reflect the disputed partnership losses for 2001-2 that the disputed tax for the 2001-2 tax year had been suspended: “While the matter is being disputed, I am arranging for the collection of the liabilities in question to be informally suspended. This informal agreement should not be considered in any way as an agreement by HMRC....”

15. Self-assessment statement for Ms Mechan dated 2 July 2012 showing “overpayment recovery for 2001/2 suspended” and stating at the bottom “You have nothing to pay”.

THE APPELLANT’S ARGUMENTS

16. Ms Mechan refers to the coding notices issued to her in 2019, showing that no tax was owing and argues that this means that it is not now open to HMRC to reclaim the tax which they say is owing for the 2001-2 tax year as a result of the denial of partnership losses for that year.

17. More specifically Ms Mechan says: referring to the *Bristol & West* case:

“The Upper Tribunal judge remarked that it would be quite wrong to allow HMRC to resile from their clear and unambiguous stance – that the Notices in this case were valid. HMRC must bear the consequences of their mistakes.”

In her case, HMRC issued the tax coding notices stating that there was no tax to pay. HMRC issued and operated those codes during 2019, at the same time as insisting on collection proceedings for tax relating to the 2001-2 tax year. It is incumbent on HMRC to ensure that the demands which it issues are accurate. (see *Onillon*)

18. In addition, her self-assessment account for the year ended 5 April 2019 also stated that she had no tax to pay.

19. In accordance with the decision in *Bristol & West*, HMRC are precluded in her case from seeking to claim tax when a notice has been issued which has taken effect and which HMRC intended to operate. HMRC cannot challenge their own figures and substitute new ones. HMRC are prevented from seeking to claim tax because the coding notices were valid.

HMRC'S ARGUMENTS

20. HMRC's argument is that the coding notices sent to Ms Mechan in 2019 have nothing to do with the disputed tax payable for the partnership returns in 2001-2. The PAYE system and the self-assessment systems are two different systems. A person may be taxed under one and not the other.

21. As for the tax dealt with by the PAYE tax coding, HMRC say that a PAYE code does not and cannot deal with prior year self-assessment liabilities unless a specific request has been made by a taxpayer or if Regulation 14A is relied upon, neither of which apply to Ms Mechan.

22. Ms Mechan's right to appeal against the coding notices for 2019 is limited as set out in Regulation 18; she has a right to stipulate an alternative code if she believes that the code issued is incorrect. Ms Mechan has not done that.

23. The coding notices sent to Ms Mechan did not state that she was not liable for tax; the coding notices do not include that statement and the position is as explained in HMRC's letter of 26 July 2021.

24. The self-assessment notices sent to Ms Mechan for the 2001-2 year stated that she had no tax to pay because the disputed tax for 2001-2 was at that time suspended from collection, as agreed with her and as reflected in her self-assessment tax account at that time, as made clear in HMRC's letter of February 2012.

25. The *Bristol and West* case relied on by Ms Mechan is not relevant; it concerned the ability of HMRC to assess a taxpayer when a statutory closure notice had been issued. In any event that decision has now been over turned in HMRC's favour by the Court of Appeal.

DISCUSSION AND DECISION

Findings of fact

26. On the basis of the evidence seen I find as a fact that:

(1) HMRC informed Ms Mechan on 1 February 2012 that the disputed tax for the 2001-2 tax year would be informally suspended.

(2) Ms Mechan's self-assessment statement for that year showed that the disputed tax had been suspended.

(3) The letters provided by HMRC with Ms Mechan's coding notices for October and November 2019 did not state that she had no tax to pay.

(4) The letter from HMRC of 18 October 2019 does specifically state that Ms Mechan is not liable for tax.

Discussion

27. Having considered the arguments of both parties, Ms Mechan's appeal in respect of the tax coding notices is not allowed.

28. I understand Ms Mechan's confusion over the apparent discrepancy between the statements made in correspondence concerning her coding notices in 2019 and HMRC's concurrent attempt to recover tax from her for the 2001-2 tax year, however I do not agree that Ms Mechan can rely on statements made in respect of her PAYE codes for 2019 to establish that she has no tax to pay for the 2001-2 tax year.

29. Nor do I consider that Ms Mechan can rely on her self-assessment statements as a definitive view of her tax liabilities from which HMRC cannot resile in circumstances in which HMRC have agreed to suspend disputed tax due for the 2001-2 tax year.

Appeal against coding notices

30. HMRC are correct to state that a taxpayer's right to appeal against a coding notice is limited. Any appeal against a particular code should include the taxpayer's statement of what they consider the correct code to be. HMRC have asked, and Ms Mechan has failed to provide, an alternative code for the 2019-20 tax year.

Bristol & West arguments

31. My understanding of Ms Mechan's appeal is not that she is appealing against this coding as such, but that in reliance on those coding notices and accompanying letters, which indicated that there was no tax to pay for 2019-20, her position is that HMRC cannot separately claim from her the tax which they say is due for 2001-2.

32. I do not agree with Ms Mechan's arguments for three reasons:

(1) The purpose of a PAYE coding notice (unlike a self-assessment statement) is not to provide a comprehensive statement of a taxpayer's tax position, but only to state, for sources of current income, what any tax liability will be. I agree with HMRC that there is no necessary read across from a PAYE statement to self-assessment tax statements for earlier years. Ms Mechan is wrong to suggest that it is possible to extrapolate from her PAYE coding notices for 2019 to her self-assessment tax liabilities for 2001-2.

(2) I do not agree that the statements of the Upper Tribunal in *Bristol & West* can be relied upon by Ms Mechan. That decision referred to the validity of a statutory closure notice, a document which has a legal force quite different from a PAYE coding notice, and considered whether a particular notice issued by HMRC should be treated as valid. That is quite different than Ms Mechan's attempt to extrapolate from statements made in respect of her PAYE tax obligations what her self-assessment tax position should be treated as.

(3) Finally, even if there were a *Bristol & West* based argument to be made by Ms Mechan in respect of her tax liabilities for 2001-2, that would be an argument based in public law and this Tribunal does not have the jurisdiction to consider public law issues, which are properly dealt with through the administrative courts (as explained in my Decision of 5 May 2021 at paragraphs [71] to [73]).

Reliance on self-assessment statements

33. Ms Mechan referred to the *Onillon* decision to support her position that because her self-assessment statement for the year to April 2019 showed that no tax was owing, HMRC were bound by that statement and could not claim the tax owing for 2001-2.

34. I do not agree that the *Onillon* decision, which in any event is only a decision of the first-tier tribunal and is not binding on me, is relevant to Ms Mechan's case; that decision concerned a taxpayer who relied on specific oral guidance from HMRC about actions which were required in circumstances where the taxpayer had no other specific knowledge of what was required. In contrast, Ms Mechan is simply referring to her self-assessment statement, not specific guidance from HMRC, whilst also being aware of the fact that an amount of tax for 2001-2 is disputed but has been suspended; this was made clear in HMRC's letter of 1 February 2012 and in her self-assessment statement for that year.

35. I do not accept that in these circumstances HMRC are bound by statements made in Ms Mechan's self-assessments statements that she had no tax to pay.

36. For these reasons this appeal is DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

37. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**RACHEL SHORT
TRIBUNAL JUDGE**

Release date: 29 DECEMBER 2021